REMARKS

Applicant respectfully requests reconsideration. Claims 1-112 are pending in the application. However, of these, claims 3-7 and 9-92 are withdrawn from consideration at this time. Therefore, claims 1, 2, 8 and 93-112 are under examination. Those claims have been rejected. Reconsideration is requested.

Claim Rejections – 35 USC § 101

The Office Action maintains (¶1, pages 2-5) that claim 1, 2 and 8 are directed to non-statutory subject matter under §101. Applicants disagree. Indeed, the analysis put forth in the Office Action has since been repudiated by the Office in its Interim Guidelines published December 20, 2005 in the Federal Register.

The Office has acknowledged, in *In re Lundgren* and the Interim Guidelines, that there is no "technological arts" requirement. The only requirement for statutory subject matter, as set forth in the *State Street* case is that the claimed matter provide a "useful, concrete and tangible" result. Like the share price found in *State Street* to demonstrate that the requirement was met, the invention of claims 1, 2 and 8 provides for an analogous royalty payment. All claims are directed to statutory subject matter.

Moreover, Applicant has amended claim 1 to expressly recite a "computer-implemented" invention though such an amendment is not required to impart a statutory quality to the subject matter. Claim 8, which is not so amended, is nonetheless drawn to statutory subject matter for the reasons given above.

The Examiner is thus requested to review Applicant's prior argument on this point (in the last response), as well as the Interim Guidelines, and to withdraw the rejection.

Claim Rejections – 35 USC § 103

Claims 1, 2, 8 and 93-112 have been rejected as obvious over Buist in view of Fenster. Applicants strongly disagree with (a) the propriety of the combination and (b) that the combination would result in the claimed invention.

Buist merely teaches trading on an electronic exchange. The Examiner correctly notes that Buist does not disclose paying a royalty on the transaction to the entity that issued the security that is the subject of the transaction.

Fenster, however, does not compensate for the deficiencies of Buist. Fenster merely teaches a very unique and highly restrictive form of housing (for people) that requires "shared cooking, dining, and childcare facilities. . ." (Fenster, at *1). The shares in the cooperative unit of Fenster ["Fenster shares," hereinafter] are distinct from shares of securities issued and traded on any of the national or international securities exchanges. Fenster shares are linked to a specific asset; they do not represent ownership of a *share of the total profits* of the issuer. Fenster shares may not be divided or freely traded. For example, co-housing communities require the purchaser to obtain approval from the community management prior to purchasing Fenster shares. Further, Fenster specifically describes multiple restrictions on alienation imposed by the co-housing community that would not be acceptable for nationally traded securities. Fenster, in fact, teaches *away* from the present invention by suggesting that a personal familiarity of the co-housing management with the purchaser is one of the main requirements for co-housing. It is completely untenable for a market in publicly traded securities to be restricted in that fashion.

Manifestly, the Examiner impermissibly equates shares in a housing unit with shares of securities traded on an open market. Thus, Fenster discusses non-analogous prior art and should be discarded from consideration. *See, e.g., In re Clay.*

The proposal to marry Buist and Fenster to arrive at the claimed invention, moreover, is an improper fabrication with no legal justification. It could only be the result of the impermissible use of hindsight. No suggestion or motivation to combine the references is found in the references themselves and one skilled in the area of securities trading would not have been motivated to look towards co-housing plans for ideas to modify Buist or any other securities trading system.

Moreover, the combination that would result, if effected, is a completely unworkable securities exchange, where each transaction would require approval by the issuer of the security and personal familiarity of the trading parties.

Thus, not only is there no motivation to even support a *prima facie* case for obviousness, but also the combination suggested by hindsight would not be the claimed invention.

The obviousness rejection therefore should be withdrawn.

Non-Elected Claims

A number of claims were restricted out of the application, and withdrawn from consideration. Claim 1 and other allowable independent claims are believed to be generic as to all or some of the withdrawn claims. As Applicant's election was made with traverse, preserving Applicant's rights, those withdrawn claims should now be examined and allowed.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,
Jacob WOHLSTADTER, Applicant(s)

By: 

Steven J. Henry, Reg. No. 27,900
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
Telephone: (617) 646-8000

Docket No.: W0538.70003US00
Date: March 9, 2006
x03/11/06x